

PROTECTIVE ORDER REVISIONS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Todd D. Weiler

House Sponsor: Kera Birkeland

LONG TITLE

General Description:

This bill addresses protective orders and civil stalking injunctions.

Highlighted Provisions:

This bill:

- ▶ clarifies that a protective order or civil stalking injunction may be filed in the county where a party is temporarily domiciled; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

78B-7-104, as last amended by Laws of Utah 2020, Chapter 142

78B-7-701, as renumbered and amended by Laws of Utah 2020, Chapter 142

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78B-7-104** is amended to read:

78B-7-104. Venue of action for ex parte civil protective orders and civil protective orders.

(1) Except as provided in Part 2, Child Protective Orders, the district court has jurisdiction of any action for an ex parte civil protective order or civil protective order brought

30 under this chapter.

31 (2) An action for an ex parte civil protective order or civil protective order brought
32 under this chapter shall be filed in the county where either party resides, is temporarily
33 domiciled, or in which the action complained of took place.

34 Section 2. Section **78B-7-701** is amended to read:

35 **78B-7-701. Ex parte civil stalking injunction -- Civil stalking injunction.**

36 (1) (a) (i) Except as provided in Subsection (1)(b), an individual who believes that the
37 individual is the victim of stalking may file a verified written petition for a civil stalking
38 injunction against the alleged stalker with the district court in the district in which the
39 individual or respondent resides, is temporarily domiciled, or in which any of the events
40 occurred.

41 (ii) A minor with the minor's parent or guardian may file a petition on the minor's own
42 behalf, or a parent, guardian, or custodian may file a petition on the minor's behalf.

43 (b) A stalking injunction may not be obtained against a law enforcement officer,
44 governmental investigator, or licensed private investigator, who is acting in official capacity.

45 (2) (a) ~~[The]~~ Except as provided in Subsection (2)(b), a petition for a civil stalking
46 injunction shall include:

47 ~~[(a)] (i) the name of the petitioner~~~~[-however, the petitioner's address shall be disclosed~~
48 ~~to the court for purposes of service, but, on request of the petitioner, the address may not be~~
49 ~~listed on the petition, and shall be protected and maintained in a separate document or~~
50 ~~automated database, not subject to release, disclosure, or any form of public access except as~~
51 ~~ordered by the court for good cause shown];~~

52 ~~[(b)] (ii) the name and address, if known, of the respondent;~~

53 ~~[(c)] (iii) specific events and dates of the actions constituting the alleged stalking;~~

54 ~~[(d)] (iv) if there is a prior court order concerning the same conduct, the name of the~~
55 ~~court in which the order was rendered; and~~

56 ~~[(e)] (v) corroborating evidence of stalking, which may be in the form of a police~~
57 ~~report, affidavit, record, statement, item, letter, or any other evidence which tends to prove the~~

58 allegation of stalking.

59 (b) (i) The petitioner's address shall be disclosed to the court for purposes of service.

60 (ii) On request of the petitioner, the petitioner's address may not be listed on the
61 petition, and shall be protected and maintained in a separate document or automated database,
62 not subject to release, disclosure, or any form of public access except as ordered by the court
63 for good cause shown.

64 (3) (a) If the court determines that there is reason to believe that an offense of stalking
65 has occurred, an ex parte civil stalking injunction may be issued by the court that includes any
66 of the following:

67 (i) respondent may be enjoined from committing stalking;

68 (ii) respondent may be restrained from coming near the residence, place of
69 employment, or school of the other party or specifically designated locations or persons;

70 (iii) respondent may be restrained from contacting, directly or indirectly, the other
71 party, including personal, written or telephone contact with the other party, the other party's
72 employers, employees, fellow workers or others with whom communication would be likely to
73 cause annoyance or alarm to the other party; or

74 (iv) any other relief necessary or convenient for the protection of the petitioner and
75 other specifically designated individuals under the circumstances.

76 (b) (i) If the petitioner and respondent have minor children, the court shall follow the
77 provisions of Section 78B-7-603 and take into consideration the respondent's custody and
78 parent-time rights while ensuring the safety of the victim and the minor children.

79 (ii) If the court issues a civil stalking injunction, but declines to address custody and
80 parent-time issues, a copy of the stalking injunction shall be filed in any action in which
81 custody and parent-time issues are being considered.

82 (4) (a) Within 10 days after the day on which the the ex parte civil stalking injunction
83 is served, the respondent is entitled to request, in writing, an evidentiary hearing on the civil
84 stalking injunction.

85 [~~(a)~~] (b) (i) [~~A~~] The court shall hold a hearing requested by the respondent [~~shall be~~

86 ~~held]~~ at the earliest possible time and within 10 days after the day on which the request is filed
87 with the court unless the court finds compelling reasons to continue the hearing. [~~The hearing~~
88 ~~shall then be held at the earliest possible time. The]~~

89 (ii) At the hearing, the burden is on the petitioner to show by a preponderance of the
90 evidence that stalking of the petitioner by the respondent has occurred.

91 [~~(b)~~] (c) An ex parte civil stalking injunction issued under this section shall state on the
92 civil stalking injunction's face:

93 (i) that the respondent is entitled to a hearing, upon written request within 10 days after
94 the day on which the order is served;

95 (ii) the name and address of the court where the request may be filed;

96 (iii) that if the respondent fails to request a hearing within 10 days after the day on
97 which the ex parte civil stalking injunction is served, the ex parte civil stalking injunction is
98 automatically modified to a civil stalking injunction without further notice to the respondent
99 and the civil stalking injunction expires three years after the day on which the ex parte civil
100 stalking injunction is served; and

101 (iv) that if the respondent requests, in writing, a hearing after the ten-day period after
102 service, the court shall set a hearing within a reasonable time from the date requested.

103 (5) (a) At the hearing, the court may modify, revoke, or continue the injunction. [~~The~~]

104 (b) At the hearing, the burden is on the petitioner to show by a preponderance of the
105 evidence that stalking of the petitioner by the respondent has occurred.

106 (6) (a) The ex parte civil stalking injunction shall be served on the respondent within
107 90 days after the day on which the ex parte civil stalking injunction is signed.

108 (b) An ex parte civil stalking injunction is effective upon service.

109 (c) If [~~no~~] a hearing is not requested in writing by the respondent within 10 days after
110 the day on which the ex parte civil stalking injunction is served, the ex parte civil stalking
111 injunction automatically becomes a civil stalking injunction without further notice to the
112 respondent and expires three years after the day on which the ex parte civil stalking injunction
113 is served.

114 (7) (a) If the respondent requests a hearing after the 10-day period after service, the
115 court shall set a hearing within a reasonable time from the date requested.

116 (b) At the hearing, the burden is on the respondent to show good cause why the civil
117 stalking injunction should be dissolved or modified.

118 (8) (a) Within 24 hours after the affidavit or acceptance of service [~~has been~~] is
119 returned, excluding weekends and holidays, the clerk of the court from which the ex parte civil
120 stalking injunction was issued shall enter a copy of the ex parte civil stalking injunction and
121 proof of service or acceptance of service in the statewide network for warrants or a similar
122 system.

123 ~~[(a)]~~ (b) The effectiveness of an ex parte civil stalking injunction or civil stalking
124 injunction [~~may~~] does not depend upon entry of the ex parte civil stalking injunction or civil
125 stalking injunction in the statewide system and, for enforcement purposes, a certified copy of
126 an ex parte civil stalking injunction or civil stalking injunction is presumed to be a valid
127 existing order of the court for a period of three years after the day on which the ex parte civil
128 stalking injunction is served on the respondent.

129 ~~[(b)]~~ (c) (i) Any changes or modifications of the ex parte civil stalking injunction are
130 effective upon service on the respondent.

131 (ii) The original ex parte civil stalking injunction continues in effect until service of the
132 changed or modified civil stalking injunction on the respondent.

133 (9) Within 24 hours after the affidavit or acceptance of service is returned, excluding
134 weekends and holidays, the clerk of the court shall enter a copy of the changed or modified
135 civil stalking injunction and proof of service or acceptance of service in the statewide network
136 for warrants or a similar system.

137 (10) The ex parte civil stalking injunction or civil stalking injunction may be dissolved
138 at any time upon application of the petitioner to the court that granted the ex parte civil stalking
139 injunction or civil stalking injunction.

140 (11) An ex parte civil stalking injunction and a civil stalking injunction shall be served
141 by a sheriff or constable in accordance with this section.

142 (12) The remedies provided in this chapter for enforcement of the orders of the court
143 are in addition to any other civil and criminal remedies available.

144 (13) The court shall hear and decide all matters arising under this section.

145 ~~[(13)]~~ (14) After a hearing with notice to the affected party, the court may enter an
146 order requiring any party to pay the costs of the action, including reasonable attorney fees.

147 ~~[(14)]~~ (15) This section does not apply to preliminary injunctions issued under an
148 action for dissolution of marriage or legal separation.